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IN THE SUPREME COURT OF THE UNITED STATES

No. 697

STATE OF FLORIDA, on the relation of JACOB ISRAEL,

Appellant,

vs.

F. ALLAN CANOVA, DON S. EVANS, JOHN STADNIK, WALTER GRIFFIN and ERIC COX, as the Florida Board of Pharmacy,

Appellees.

JURISDICTIONAL STATEMENT

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

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APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

OPINIONS INVOLVED

The opinion of the Supreme Court of Florida (A 1) is reported in 123 So. 2d 672.

STATEMENT OF GROUNDS

This is an appeal from a decision of the Supreme Court of Florida upholding the validity of a Florida

statute in a case in which appellant contended that said statute is invalid because of being repugnant to the Fifth and Fourteenth Amendments to the Constitution of the United States.

The judgment (A 1) sought to be reviewed was entered and filed on October 12, 1960. The notice of appeal from said judgment was filed on December 8, 1960 in the Supreme Court of Florida.

Jurisdiction of said appeal is conferred on this Court by Section 1257 (2) United States Code Annotated.

The jurisdiction of this Court in such circumstances was sustained in **Norfolk Turnpike Company vs. Commonwealth of Virginia**, 225 U. S. 264.

This appeal involves the validity of Chapter 28150, Acts of 1953, as amended, the pertinent portions thereof being published in Florida Statutes Annotated as Sections 465.071, 465.081 and 465.091. These sections are set forth verbatim in the appendix at pages 6 - 9.

STATEMENT OF QUESTION INVOLVED

DOES CHAPTER 28150 UNREASONABLY, CAPRICIOUSLY AND ARBITRARILY DISCRIMINATE BETWEEN PERSONS OF THE SAME CLASS, TO-WIT, THOSE PERSONS HAVING THE SAME EDUCATIONAL QUALIFICATIONS AND THE SAME EXPERIENCE IN THE PRACTICE OF PHARMACY, BY DENYING SOME OF THE PERSONS IN THAT CLASS THE PRIVILEGE OF PRAC-

TICING PHARMACY IN FLORIDA SOLELY BECAUSE THEY WERE NOT REGISTERED AS PHARMACISTS IN THE STATE OF FLORIDA AT THE TIME OF THE ENACTMENT OF SAID CHAPTER AND ALLOWING OTHER PERSONS IN THAT CLASS THE PRIVILEGE OF PRACTICING PHARMACY IN FLORIDA SOLELY BECAUSE THEY WERE REGISTERED AS PHARMACISTS IN FLORIDA AT THE TIME OF THE ENACTMENT OF SAID CHAPTER?

STATEMENT OF THE CASE

Relator graduated from the Fordham University College of Pharmacy in 1925 when that college and other accredited colleges of pharmacy offered only two-year courses.

By reason thereof, he is qualified to take the examination for registration as a pharmacist under Chapter 25238, Laws of Florida; but the Florida Board of Pharmacy has denied him permission to take said examination because Chapter 25238 has been repealed by Chapter 28150 and Chapter 28150 requires graduation from a four-year course in pharmacy.

On petition of relator, who contended that Chapter 28150 is unconstitutional, the lower court issued an alternative writ of mandamus commanding respondents, in the alternative, to grant relator leave to take the examination if he meets the requirements of Chapter 25238.

The alternative writ (R 1) alleged that Chapter 28150 deprives relator of the equal protection of the laws and unreasonably, arbitrarily and unnecessarily abridges his privileges and immunities as a citizen of the United States, in violation of Section 12 of the Declaration of Rights of the Constitution of the State of Florida and the Fifth and Fourteenth Amendments of the Constitution of the United States, because said chapter unreasonably, capriciously and arbitrarily discriminates between persons of the same class, to-wit, those persons having the same educational qualifications and the same experience in the practice of pharmacy, denying some of the persons in that class (including relator) the privilege of practicing pharmacy in Florida solely because they were not registered as pharmacists in the State of Florida at the time of the enactment of Chapter 28150 and allowing other persons in that class the privilege of practicing pharmacy in Florida solely because they were registered as pharmacists in Florida at the time of the enactment of said chapter.

On motion of respondents to quash said writ (R 10), the lower court held that Chapter 28150 does not violate the Fifth and Fourteenth Amendments to the Constitution of the United States and ordered said writ quashed (R 12). On appeal from that order (R 13) the Supreme Court of Florida affirmed the order quashing said writ (A 1).

Appellant seeks review of that judgment (R 20) and contends that the lower court erred when it quashed the alternative writ of mandamus and that the Supreme Court of Florida erred when it affirmed said order.

THE FEDERAL QUESTIONS INVOLVED ARE SUBSTANTIAL

The judgment sought to be reviewed is a final judgment of the Supreme Court of Florida, the highest court of that state.

That judgment upholds the validity of a Florida statute regulating admission to the practice of pharmacy over appellant's contention that that statute violates the Fifth and Fourteenth Amendments to the Constitution of the United States.

Although relator graduated from a regular two-year course in pharmacy at an accredited college of pharmacy in 1925 and has practiced, and been registered, in New York since that date (R 1), he is not qualified to take the examination for registration as a pharmacist in Florida, under Chapter 28150, because he is not a graduate of a four-year course.

Yet, under Chapter 28150, a classmate of relator, who graduated with him from the same two-year course in 1925, is permitted to practice pharmacy in Florida if he was registered in Florida at the time of the enactment of Chapter 28150.

Chapter 28150 divides all pharmacists having the same qualifications into two classes, one class consisting of those registered in Florida before the enactment of Chapter 28150 and the other class consisting of those who were not registered in this state at that time. But it does not classify them in this manner for the purpose of determining which shall be presumed to be qualified and

which shall be required to submit **evidence that they are** qualified by passing an examination. It classifies them in this manner for the sole purpose of determining which pharmacists shall be permitted to practice in this state and which shall not, under any circumstances, be permitted to practice in this state. For example, in the case of two-year graduates, those two-year graduates who were registered at the time of the enactment of Chapter 28150 are permitted to continue practicing, but two-year graduates with the same educational qualifications and the same experience, who were not registered in Florida at the time of the enactment of Chapter 28150, are not permitted to practice even if they can demonstrate that they are qualified to do so by passing an examination.

Appellant contends that this unreasonable, capricious and arbitrary discrimination between persons of the same class, to-wit, those persons having the same educational qualifications and the same experience in the practice of pharmacy, deprives relator of the equal protection of the laws and unnecessarily abridges his privileges and immunities as a citizen of the United States, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

This question was not considered by this court in **Dent vs. West Virginia,** 129 U. S. 114 and in **Watson vs. Maryland,** 218 U. S. 173. The statutes in those cases presumed that those already practicing were qualified to practice and required others to prove their qualifications by passing examinations, whereas in the case at bar the statute deprives the "2 year graduate with 25 years of experience" of the privilege of proving by examination that he is as well qualified to practice as the "2 year grad-

uate with 25 years of experience" who was already registered as a pharmacist in Florida at the time of the enactment of Chapter 28150.

The questions involved here do not concern only the appellant. In every state of the Union, efforts are being made to raise the standards of admission to all of the professions. In the attempts of the legislatures of those states to raise those standards without depriving those already registered of the privilege of continuing the practice of their professions, those legislatures are confronted with the question posed by this appeal.

There is a constitutional way that such standards can be raised without depriving those already registered from continuing to practice and an adjudication by this Court of the federal questions involved will be of assistance to those legislatures in their efforts to accomplish that result without violating the Constitution of the United States.

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CERTIFICATE OF SERVICE

I certify that I served two copies of the foregoing printed brief upon counsel of record for appellees by depositing in an official United States mail box on February 3, 1961 a sealed envelope, containing said copies, bearing adequate prepaid air mail postage, and addressed to Honorable Richard W. Ervin, Attorney General of Florida, Tallahassee, Florida.

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OPINION AND JUDGMENT

(123 So. 2d 672)

IN THE

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1960

CASE No. 30,527

STATE OF FLORIDA, on the Relation of JACOB ISRAEL,

Appellant,

vs.

F. ALLAN CANOVA, DON S. EVANS, JOHN STADNIK, WALTER GRIFFIN and ERIC COX, as the Florida Board of Pharmacy,

Appellees.

Opinion filed October 12, 1960.

An Appeal from the Circuit Court for Leon County, Ben C. Willis, Judge.

Robert H. Givens, Jr., for Appellant.

Richard W. Ervin, Attorney General and Leonard R. Mellon, Assistant Attorney General, for Appellees.

ROBERTS, J.

This cause is here on appeal from a judgment of the Circuit Court of Leon County upholding the validity of Chapter 28150, Laws of Florida, Acts of 1953, and therefore reviewable by this court on direct appeal.

The relator Jacob Israel, appellant, is a New York pharmacist. His professional degree was awarded upon completion of a two-years' training course of study in that state in 1925, and since that time he has been licensed there. The respondent Board, appellees, denied his application for permission to take the examination, preliminary to registration in this state, upon authority of the cited law, Chapter 28150, which requires that applicants, in order to be eligible for examination, shall be graduates of an accredited four-year college of pharmacy. The ruling of the Board has, in this mandamus proceeding, been approved and the law upheld by the circuit court.

Appellant's contention, briefly, is that the statute in controversy, insofar as it excepts from its terms those pharmacists already registered while excluding from eligibility for examination those such as appellant who have academic training identical with that of others previously registered and currently practicing, deprives him of the equal protection of the laws and abridges his privileges and immunities as a United States citizen, contrary to Section 12, Declaration of Rights, Florida Constitution, and the fourteenth amendment to the United States Constitution.

The test in such disputes is clear: "It is well settled that a legislative classification should have some just relation to or reasonable basis in, essential differences of conditions and circumstances with reference to the subject regulated, and should not be merely arbitrary

. . . ." Eslin v. Collins, Fla. 108 So. 2d 889. And the particular problem posed in this litigation does not appear to be novel. We are referred to a well reasoned and substantiated opinion of the Kansas court, relating to a statute requiring a diploma for the practice of dentistry but excluding from the requirement those already practicing:

> "The legislature saw fit to permit those practicing in the state when the act was passed to continue to practice without diploma or other evidence of competency. It may be, as contended, that the fact of being in the practice is not the best test or evidence of skill and capability; but the courts have nothing to do with the expediency or wisdom of the standard of qualification fixed, nor with the tests adopted for ascertaining the same. The legislature proceeded upon the theory that the fact that they had been engaged in the practice within the state was sufficient evidence of their proficiency in the profession. This fact is made by the legislature an evidence of skill and competency equivalent to a diploma from a dental college, and the wisdom of either test is a question for the legislature, and not for the courts. The act cannot be held to unduly discriminate between persons or classes, and unconstitutional because it exempts those engaged in the practice within the state when the law was enacted from the necessity of obtaining a diploma. (Citing cases) All who enter the profession after the passage of the law are subject to the same conditions." State v. Creditor, 44 Kan. 565, 24 P. 346, 347.

This rule of prospective uniformity under these circumstances is, in our opinion, the prevailing and proper view. Anno. 136 A.L.R. 219. The appellant concedes the possibility of creating a presumption, even conclusive, of competence in favor of previously registered or practicing pharmacists but contests a simultaneous exclusion of otherwise similarly situated parties from the right to demonstrate their competence by examination. Reliance is placed chiefly on language from cases upholding statutes requiring examination of future applicants but exempting established practitioners. State v. Doran, 8 S.D. 35, 134 N.W. 53; State v. Mayor & Common Council (Wis.), 276 N.W. 311.

We find no direct or substantial support for appellant's position in the decisions cited. To the contrary, the rationale of cases sustaining separate classification of present practitioners for purposes of examination, i. e. the presumption of competence arising from acceptable performance for a given period of time within the governing jurisdiction, would sustain such classification for the purposes of other requirements directed to demonstration of competence preliminary to examination, such as the academic requirements here involved. Watson v. Maryland, 218 U. S. 173, 54 L. Ed. 987, 30 S. Ct. 644. The contested provisions of the statute, Chapter 28150, must be sustained as resting upon valid and legitimate grounds for classification in regulatory legislation of this nature.

The judgment appealed from is
Affirmed.

THOMAS, C. J., TERRELL, HOBSON, DREW, THORNAL and O'CONNELL, JJ., concur..

PERTINENT PORTIONS OF CHAPTER 28150, LAWS OF FLORIDA

(Sections 465.071, 465.081 and 465.091, Florida Statutes Annotated)

465.071 Qualifications of applicants for examination

(1) The board of pharmacy shall examine by written and practical laboratory examinations under such rules and regulations as the board may prescribe, every person who shall have:

(a) applied for examination and registration in accordance with Sec. 465.061, and shall have paid the fee required by said section, and

(b) submitted proof satisfactory to the board that he is not less than twenty-one years of age, a citizen of the United States, of good moral character, and he is a recipient of a degree from a school or college of pharmacy financially supported by the state or from a school or college of pharmacy in the United States or any of its territories or possessions including the District of Columbia, which school or college of pharmacy required the applicant to complete not less than four academic years of higher educational training consisting of not less than three thousand hours of instruction in cultural, foundation, and professional courses for the degree in pharmacy and which courses and school or college of pharmacy may have been found by the Florida board of pharmacy to satisfactorily supply the cultural, foundation, and professional education necessary in training a pharmacist for the protection of public health, and

(c) submitted proof satisfactory to the board that he has been employed, subsequent to his sixteenth birthday, as an apprentice to a registered pharmacist, in a retail drug store or in the pharmacy of a hospital with an out-patient department, and while so employed was engaged in the compounding of prescriptions and the sale and distribution of drugs and medical supplies, for a total of not less than two thousand and eighty hours of which not less than one thousand and forty hours occurred after such applicant was granted his degree from said school of pharmacy or college of pharmacy, and

(d) shall have met such additional requirements as to age, education, experience and moral character as the board may have prescribed; for the purpose of carrying into effect the provision of this section.

* * *

465.081 **License; reciprocal licensure renewal**

(1) If a majority of the members of the Florida board of pharmacy shall be satisfied that an applicant for registration is of good moral character and is competent to practice as a pharmacist as determined by examination of such applicant and that such applicant has satisfied the requirements of Sec. 465.061 and Sec. 465.071 and, if such applicant once held a license but said license was revoked or suspended by the board, that such applicant has complied with the terms and conditions set forth by the board in the order revoking or suspending the license of such person, the board shall license such person as a pharmacist and shall issue to such person a registration certificate.

* * *

465.091 **Same; expiration; renewal fee**

(1) All certificates of registration issued by the Florida board of pharmacy shall expire on the twentieth day of June following the date of issuance of same, and on the twentieth day of June thereafter unless registration has been renewed in accordance with the provisions of this section.

(2) Every registered pharmacist shall pay to the secretary of the board annually on or before the twentieth day of June a renewal fee of five dollars.

(3) The payment of the renewal fee shall entitle the registrant to renewal of certificate. If the renewal fee for any pharmacist's certificate be unpaid by the twentieth of June of any year, the holder thereof may be reinstated as a registered pharmacist only upon payment of a penalty of five dollars and all lapsed fees; provided that actual retirement from the profession by any registered pharmacist for a period not exceeding five years shall not deprive him of the right to renew the registration upon payment of lapsed fees.